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June 15, 2010

### VIA EMAIL AND FACSIMILE

Mr. Dave Singleton  
Native American Heritage Commission  
915 Capitol Mall, Room 364  
Sacramento, CA 95814

Re: Padre Dam Municipal Water District "Eastern Service Area Secondary  
Connection Project State Clearinghouse No. 2008091003;  
Ridge Hill Road, San Diego County, California"

Dear Mr. Singleton:

This letter will serve as Padre Dam Municipal Water District's supplemental submission to the Native American Heritage Commission ("NAHC") for the hearing to be held on June 17, 2010.

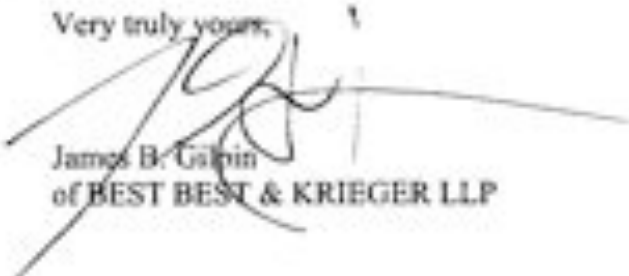
- Declaration of Maureen Stapleton in Support Opposition to Motion for Preliminary Injunction.
- Declaration of Donald Densford in Support Opposition to Motion for Preliminary Injunction.
- Declaration of Howard Cuero in Support Opposition to Motion for Preliminary Injunction.
- Declaration of Micah Hale in Support Opposition to Motion for Preliminary Injunction.
- Declaration of Frank Kowalski in Support Opposition to Motion for Preliminary Injunction.
- Declaration of Neal Brown in Support Opposition to Motion for Preliminary Injunction.

Mr. Dave Singleton  
June 15, 2010  
Page 2

**EXHIBITS**

- Exhibit FF: Forensic Anthropology Report dated June 7, 2010.
- Exhibit GG: Map: Padre Dam Secondary Connection – Location of Core Area and Proposed on-Site Repatriation Area.
- Exhibit HH: Photograph taken on January 29, 2010 depicting designated portion of rock being drilled for use in monument.
- Exhibit II: Photograph taken on February 24, 2010 depicting the designated portion of rock after drilling.
- Exhibit KK: Photograph taken on February 17, 2010 depicting the status of the trenching on the Project site.
- Exhibit LL: Photograph taken on February 18, 2010 depicting the status of the trenching on the Project site.

Very truly yours,



James B. Galpin  
of BEST BEST & KRIEGER LLP

JBG:img  
Enclosures

**STAPLETON  
DECLARATION**

1 JAMES B. GILPIN, Bar No. 151466  
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7 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO  
11

12 VIEJAS BAND OF KUMEYAAY  
INDIANS, a federally recognized Native  
13 American Tribe,

14 Plaintiff,

15 v.

16 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation  
17

18 Defendant.  
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Case No. 37-2010-000932030-CU-TT-CTL  
Judge: Hon. Judith Hayes

DECLARATION OF MAUREEN A.  
STAPLETON IN SUPPORT OF  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION

DATE: June 25, 2010  
TIME: 1:30 p.m.  
DEPT: 68

SEAL:JHALEY07/13/11

DECLARATION OF MAUREEN A. STAPLETON IN SUPPORT OF  
OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

1 I, Maureen A. Stapleton, declare as follows:

2 1. I am the General Manager of the San Diego County Water Authority ("SDCWA").  
3 I became the General Manager of the San Diego County Water Authority in January 1996. I have  
4 personal knowledge of the facts stated below and if called to testify, I would and could testify  
5 competently thereto. Stapleton assumed her duties in January 1996.

6 2. SDCWA is the regional water agency that provides up to 90 percent of all the  
7 water used in San Diego County, supporting a \$169 billion economy and the quality of life for  
8 over 3.2 million residents.

9 3. As General Manager, I oversee a dynamic agency that is aggressively pursuing a  
10 comprehensive array of water supply and infrastructure programs designed to diversify and  
11 improve the reliability of San Diego County's water supply.

12 4. To achieve the desired supply diversity and reliability, I am also responsible for  
13 the implementation of a \$3.8 billion Capital Improvement Program, which includes an integrated  
14 system of new and expanded storage reservoirs, treatment facilities and conveyance pipelines  
15 designed to meet the water needs of the San Diego region. In addition, the Water Authority is  
16 aggressively pursuing the development of seawater desalination, outdoor conservation, and  
17 enhanced recycling to continue the supply diversification effort for the San Diego region. An  
18 important component of the Capital Improvement Program is the East County Regional Treated  
19 Water Improvements Project, which is a joint program involving the SDCWA, Padre Dam  
20 Municipal Water District, Helix Water District, Otay Water District, and Lakeside Water District.  
21 This joint program will significantly improve the regional water treatment capacity in Eastern San  
22 Diego County by maximizing use of an existing water treatment plant, thereby reducing treated  
23 water demands on the SDCWA and The Metropolitan Water District of Southern California. The  
24 regional benefit of this program is achieved through the cooperative use of agency facilities and  
25 the commitments made by each agency to accept certain financial obligations and construct new  
26 facilities pursuant to written agreements. New facilities have already been or are currently under  
27 construction by all the other participating agencies. As required by an agreement with the  
28 SDCWA, Padre Dam is obligated to construct the Secondary Connection Project and purchase a

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1 fixed quantity of water developed from the program. Completion of the Secondary Connection  
2 Project by Padre Dam assures a successful implementation of the program benefiting all  
3 participating agencies.

4 5. Padre Dam has historically obtained treated water from the SDCWA through a  
5 connection to the Second San Diego Aqueduct. This Aqueduct has experienced treated water  
6 delivery constraints at various times since the pipelines were constructed in the early 1960's. As  
7 part of the East County Regional Treated Water Improvements Project, the SDCWA committed  
8 over \$20 million to expand the Helix Water District's Levy Water Treatment Plant to provide a  
9 secondary treated water supply source to Padre Dam. In 2006, the SDCWA executed an  
10 agreement which, among other things, required Padre Dam to construct facilities to serve up to 12  
11 million gallons per day to the Padre Dam Eastern Service Area. The Padre Dam Secondary  
12 Connection Project was designed to fulfill the terms of this agreement. Without the Secondary  
13 Connection Project, Padre Dam will be unable to comply with this agreement, and more  
14 importantly, portions of the Padre Dam service area remain at risk of treated water shortages.

15  
16 I declare under penalty of perjury pursuant to the laws of the State of California that the  
17 foregoing is true and correct. Executed this 10th day of June, 2010 at San Diego, California.  
18

19  
20   
21 MAUREEN A. STAPLETON

**DENSFORD  
DECLARATION**

1 JAMES B. GILPIN, Bar No. 151466  
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7 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

11  
12 VIEJAS BAND OF KUMEYAAY  
INDIANS, a federally recognized Native  
13 American Tribe,

14 Plaintiff,

15 v.

16 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation

17 Defendant.  
18

Case No. 37-2010-000932030-CU-TT-CTL  
Judge: Hon. Judith Hayes

DECLARATION OF DONALD R.  
DENSFORD IN SUPPORT OF OPPOSITION  
TO MOTION FOR PRELIMINARY  
INJUNCTION

DATE: June 25, 2010  
TIME: 1:30 p.m.  
DEPT: 68



1 I, Donald R. Densford, declare as follows:

2 1. I have personal knowledge of the facts stated below and if called to testify, I would  
3 and could testify competently thereto.

4 2. I was born in Tulsa, Oklahoma on October 31, 1936. I am one third Cherokee  
5 Indian on my mother's side. My grandmother also told me that I am part Blackfoot. In 1948 my  
6 family moved to California.

7 3. I currently own property located at 9036 Sierra Alta Way, El Cajon, California,  
8 which is next to the property where Padre Dam Municipal Water District is building its  
9 Secondary Connection Project. In 1954, my father bought the property located at 9036 Sierra  
10 Alta Way. In the early 1960s, I got married and moved out of the 9036 Sierra Alta Way Property.  
11 My family continued to live there however and I visited frequently, often helping my father to cut  
12 weeds or clean things up. In 1980, I moved back to 9036 Sierra Alta Way on a permanent basis.  
13 I am very familiar with the District's property and the conditions of the property based on the  
14 substantial amount of time I have spent next door to the property.

15 4. From the time we first moved in, people used the District's property as an  
16 unofficial dump site. Over the years I observed a substantial amount of trash and debris unloaded  
17 at the site, including: old car parts, concrete blocks, scrap iron, scrap lumber, wooden posts, and  
18 barbed wire. My father and I tried to take some of the trash to the dump because we were afraid  
19 it was a fire hazard. Over the years I took numerous loads in my pick-up truck to the dump. As  
20 the area became more populated, less dumping of trash occurred on the District's property and it  
21 slowed down substantially about 7 or 8 years ago.

22 5. I am also aware that numerous people in the area, including residents in a trailer  
23 park constructed next door to the District's property, as well as a veterinarian who used to live in  
24 the area, used the District's property over the years to bury animals, including dogs, cats and  
25 horses.

26 6. In 1954, when we moved in, a family was living on the District's property in a  
27 dilapidated house, which was located near where the current entrance gate is located on the  
28 District's property. Eventually the man moved out and squatters occupied the house on the

DECLARATION OF DONALD DENSFORD

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DECLARATION OF DONALD DENSFORD IN SUPPORT OF OPPOSITION  
TO MOTION FOR PRELIMINARY INJUNCTION

1 District's property, which caused the dumping of trash to increase until they abandoned the  
2 house. Because of the termite damage and the dilapidated nature of the house, the house was  
3 eventually torn down.

4 7. In the late 1950s to early 1960s, wild parties were thrown nearby and on the  
5 District's property – because the area was not heavily populated, those parties were not often  
6 disturbed. Later, two bodies were found, months apart, on or near the District's property. After  
7 the bodies were discovered, the sheriff began to patrol the area more regularly and eventually the  
8 wild parties stopped.

9 8. In the mid 1960s, a person came out to the District's property and plowed the  
10 entire property, claiming that he was hired to get rid of the weeds. He used a tractor to plow the  
11 property.

12 9. In the late 1970s, some children created a motorcycle course on the District's  
13 property and would race motorcycles on the property. Within the last ten years, some of the  
14 children living at the trailer park constructed next door to the District's property also built a race  
15 track course for quads and 4-wheelers.

16 I declare under penalty of perjury pursuant to the laws of the State of California that the  
17 foregoing is true and correct.

18 Executed this 10 day of June, 2010 at San Diego, California.

19   
20 DONALD R. DENSFORD  
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**CUERO**  
**DECLARATION**

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7 Attorneys for Defendant  
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DISTRICT, a municipal corporation  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO  
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12 VTEJAS BAND OF KUMEYAAY  
INDIANS, a federally recognized Native  
13 American Tribe,

14 Plaintiff,

15 v.

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DISTRICT, a municipal corporation  
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18 Defendant.  
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Case No. 37-2010-000932030-CU-TT-CTL  
Judge: Hon. Judith Hayes

DECLARATION OF HOWARD CUERO IN  
SUPPORT OF OPPOSITION TO MOTION  
FOR PRELIMINARY INJUNCTION

DATE: June 25, 2010  
TIME: 1:30 p.m.  
DEPT: 68

SOLIT/HALEY:JPH/NO.2

DECLARATION OF HOWARD CUERO IN SUPPORT OF OPPOSITION  
TO MOTION FOR PRELIMINARY INJUNCTION

1 I, Howard Cuero, declare as follows:

2 1. I am a Native American Monitor for the Secondary Connection Project  
3 ("Project") of Padre Dam Municipal Water District ("District"). I have personal knowledge of  
4 the facts stated below and if called to testify, I would and could testify competently thereto.

5 2. I am a member of the Campo Kumeyaay Nation. I have been raised in the Native  
6 American culture my entire life and have experience studying, listening to, and being a part of the  
7 history, culture and practices of the Native American people.

8 3. Before becoming a Native American monitor, I studied Archaeology in a class  
9 taught on the Campo Kumeyaay Nation reservation. The Archaeology course taught  
10 archaeological studies with an emphasis on Native American culture. My interest in these studies  
11 led me to become a Native American Monitor.

12 4. I began training to be a Native American Monitor as an apprentice to Darren Hill  
13 of the Cabuilla tribe. Darren Hill is an experienced Native American Monitor who works for the  
14 Native Ground Monitoring and Research company. As Darren Hill's apprentice, I gained  
15 instruction and experience in monitoring various sites with potential cultural resources, and  
16 Darren eventually certified me to work as a Native American Monitor. After my certification, I  
17 have worked for Native Ground Monitoring and Research company as a Native American  
18 Monitor for approximately seven years.

19 5. As a Native American Monitor on the Project, I was on site everyday of  
20 construction from the beginning of construction in approximately December 2009 up until work  
21 was halted on the Project on February 25, 2010. I have also been the Native American Monitor  
22 onsite everyday since construction re-commenced on June 4, 2010.

23 6. As Native American Monitor on the Project, I ensure the proper measures are  
24 taken to identify and prevent the disturbance or destruction of any Native American cultural  
25 resources, including human remains, and that any such resources are treated with the proper  
26 respect.

27 7. I closely observed all construction activities on the Project in order to halt  
28 construction in the event any Native American cultural resources were uncovered to prevent the  
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1 destruction or damage of any such resources. When Native American cultural resources were  
2 uncovered, spotted by either myself or construction personnel on the Project, construction  
3 immediately halted so that I could examine any uncovered items and determine whether they  
4 were cultural resources.

5 8. When items were identified as potential cultural resources, those items were  
6 carefully and respectfully removed from the earth and secured in my custody. Then I turned over  
7 any items to Clint Linton, another Native American monitor. Once Clint Linton received the  
8 items, it was his responsibility to turn them over to the Most Likely Decedent previously  
9 designated by the Native American Heritage Committee, the Kurneyway Cultural Repatriation  
10 Committee ("KCRC"), for repatriation.

11 9. In my time on the Project, the District's and the construction personnel's behavior  
12 on the Project site has been very sensitive and appropriate toward potential Native American  
13 cultural resources. Whenever the construction crew came across an artifact, the work has  
14 stopped, and the construction personnel have asked me to examine and make a determination  
15 regarding the find before any work resumes.

16 10. During construction from December 2009 through February 25, 2010, no human  
17 remains have been uncovered on the project site. During that time, approximately three bone  
18 fragments were uncovered, but based on the size of the bones and the lack of charring, I believe  
19 the bones recovered were animal, probably cow, as opposed to human remains.

20 11. I also understand that the Project site has once been utilized as part of a ranch or  
21 farm, which is consistent with cow bones being on the property. A number of artifacts were  
22 uncovered during my time at the site, including pottery, metates, hand stones, and arrowheads.

23 12. In early January, I met with Dave Singleton from the Native American Heritage  
24 Commission ("NAHC") at the Project site. Mr. Singleton asked me where the artifacts were  
25 found, and I showed him the area. I also told Mr. Singleton that I kept artifacts that had been  
26 found with me until I was able to turn them over to Clint Linton. Mr. Singleton did not ask for my  
27 opinion regarding the nature of the site.

28 13. In early February 2010, two representatives from Viejas visited the site and  
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1 inquired regarding Native American cultural resources found on the Project site. I showed them  
2 the pictures which I had of the artifacts found. The Viejas representatives did not ask my opinion  
3 of the nature of the site.

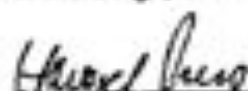
4 14. Since construction re-commenced on June 4, 2010, one bone fragment has been  
5 uncovered. The coroner however could not positively identify that bone fragment as a human  
6 remain.

7 15. Based on my experience as a Native American Monitor and my observations of the  
8 quantity and type of items recovered at the Project site, I do not believe the site is a sanctified  
9 burial ground, cemetery or ceremonial place. I further do not believe that there is any evidence to  
10 support the site being determined to be graveyard or burial ground. Given the low concentration  
11 of human remains recovered on the site, none of which were recovered during my period on site, I  
12 am of the opinion the site is a watering hole where early Native American people stopped to eat  
13 and rest during their journeys. I believe any human bones found at the site were only there  
14 incidentally, in that some Native American happened to die while at the rest area, as opposed to  
15 the site being a dedicated burial area.

16 16. I do not believe that avoidance is appropriate or necessary to mitigate the impact  
17 of the Project on any Native American cultural resources which may be uncovered as a result of  
18 future construction on the site.

19 I declare under penalty of perjury pursuant to the laws of the State of California that the  
20 foregoing is true and correct.

21 Executed this 10th day of June, 2010 at San Diego, California.

22   
23 HOWARD CUERO

**HALE  
DECLARATION**



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6 Attorneys for Defendant  
7 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO  
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12 VIEJAS BAND OF KUMEYAA  
INDIANS, a federally recognized Native  
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14 Plaintiff,

15 v.

16 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation  
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Case No. 37-2010-000932030-CU-TT-CTL  
Judge: Hon. Judith Hayes

DECLARATION OF MICAH HALE IN  
SUPPORT OF OPPOSITION TO  
PRELIMINARY INJUNCTION

Date: June 25, 2010  
Time: 1:30 pm  
Dept.: 68

1  
2 I, Micah Hale, declare under penalty of perjury as follows:

3 1. I am a principal investigator for archaeology issues on the Padre Dam Municipal  
4 Water District's ("District") Secondary Connection Project ("Project"). I have personal  
5 knowledge of the facts stated below, and if called to testify, I would and could testify competently  
6 thereto.

7 2. I obtained a Bachelor of Science in anthropology from University of California,  
8 Davis in 1996; a Masters of Arts from California State University Sacramento in 2001; and a  
9 Doctorate in Anthropology from University of California Davis in 2009.

10 3. I have been a prehistoric archeologist since 1995. I have practiced in the states of  
11 California, Nevada, Arizona and Oregon. I worked for California State University Sacramento's  
12 Archeological Research Center from 1996 to 2001. I have worked for ASM Affiliates ("ASM")  
13 since 2001 on archeological issues for both public and private projects.

14 4. I was hired by the District in 2007 to analyze cultural resources on the Project Site  
15 ("Site").

16 **ENVIRONMENTAL INVESTIGATION**

17 5. In June 2007, EDAW, Inc. ("EDAW"), conducted an Initial Study on the Site.  
18 The initial study included performing a Site pedestrian survey and confirming the Site was not a  
19 designated sacred site recorded with the South Coastal Information Center or the San Diego  
20 Museum of Man. EDAW identified the possible existence of cultural resources including milling  
21 features and pottery fragments. At that time, EDAW retained Carmen Lucas as a Native  
22 American Monitor for future site work.

23 6. In 2007, EDAW's Final Archaeological Survey Report was released to all  
24 interested persons. ASM was thereafter retained by the District for further studies on the Site,  
25 including an archaeological test phase to determine the eligibility of the site for listing on the  
26 California Register of Historic Resources and/or the National Register of Historic Places. ASM  
27 completed the evaluation report in 2008.

7. In November 2008, the District approved the Mitigated Negative Declaration ("MND") for the Project which was certified on November 26, 2008 (State Clearing House Number 2008091003). The MND included mitigation measures to address the cultural resources found onsite, including implementing a Data Recovery Program for the Project, referred to as the Mitigation Monitoring and Reporting Program ("MMRP").

#### **DATA RECOVERY**

8. My field work on the Project commenced January 20, 2009 and was completed March 4, 2009.

9. Consistent with the District's MMRP, the purpose of the Data Recovery Program was to employ a sampling design constructed to maximize the potential to address the research questions on the Site. The goals of the sampling design at the Site included: isolating the portions of the Site with the best preserved deposits and potential for intact features; recovering as large and diverse an assemblage as possible from the Site in a timely manner; examining horizontal and vertical variability in artifact frequencies to identify occupational components and activity areas; and obtaining a 2.5 to 5.0 percent sample of the site to adequately address research issues.

10. My Site data recovery included a near six percent sample, which was sufficient to satisfy all data investigation protocol requirements. A five percent sample is generally considered sufficient for data recovery to determine what may be necessary to mitigate significant cultural resource environmental impacts from the Project.

11. Through my evaluation of the Site, I was able to determine a "core area" – the area of the Site with the highest potential for containing archeological deposits. Exhibit Q attached to the notice of lodgment in support of opposition to preliminary injunction depicts the "core area" on the Site.

12. The core area was originally defined by ASM in 2008 during the evaluation phase based on higher artifact densities relative to surrounding deposits. During the subsequent data recovery phase, I used intensive mapping and large excavation blocks to identify the limits of organic residues, areas of high artifact density, and reduced levels of disturbance to narrow down the core area for ongoing data recovery efforts. One key factor in narrowing down the core area

1 included delineation of extensively disturbed deposits (i.e., debris flows and push piles laden with  
2 modern rubbish). Non-core areas generally lack organic residues, have low artifact densities, and  
3 higher densities of modern rubbish than in the core area.

4 13. The core area was heavily disturbed by natural and human activities shown by the  
5 presence of modern materials at depths below the discovery of prehistoric materials and human  
6 bones. This is indicative of heavy Site disturbance.

7 14. Modern refuse was found at the lowest level of the excavation test pits during the  
8 Data Recovery Program, which indicates that the bones and artifacts discovered above such  
9 refuse were not in their original resting places.

10 15. Modern materials found on the Site included diapers, glass, nails, plastic bags and  
11 parts of mattresses found at a depth of approximately 100 centimeters.

12 16. Given the level of disturbance on this Site, and because our exhaustive efforts  
13 during Data Recovery failed to locate features such as hearths and burials, it is highly unlikely  
14 that any significant discovery, other than perhaps a few small human bone fragments, will be  
15 found in the future.

16 **HUMAN REMAINS**

17 17. I complied with Public Resources Code section 5097.98 in my investigation and  
18 treatment of the human bone fragments found onsite.

19 18. On February 3, 2009, burned bone fragments were discovered on the Site, which  
20 were determined to be human on February 6, 2009, by the San Diego County Coroner. These  
21 bone fragments were presumed to be Native American based upon the presence of Native  
22 American cultural deposits and the lack of evidence for a non-Native American burial or  
23 cemetery.

24 19. With the approval of the San Diego County Medical Examiner, Paul Parker, I  
25 contacted the Native American Heritage Commission ("NAHC") regarding the discovery of bone  
26 fragments at the Site, who designated the Kumeyaay Cultural Repatriation Committee ("KCRC")  
27 as the Most Likely Descendent ("MLD") of the identified bone fragments. I was informed by  
28

David Singleton of NAHC that Bernice Paipa of KCRC would be the designated MLD contact person for KCRC.

20. All bone fragments found on the Site through the Data Recovery Program were examined by the Medical Examiner for identification within three days, with full agreement by the Native American Monitor, Carmen Lucas. During the time between discovery and identification by the Medical Examiner, all work at the Site ceased and all cultural materials were stored in a locked container onsite.

21. Bernice Paipa of KCRC visited the Site on February 13, 2009, and the District agreed to continue the recovery work, and store all potential human remains onsite in a secure container until all fieldwork was completed. KCRC agreed that the existing onsite work was acceptable, and that I could continue Data Recovery.

22. A total of 14 human bone fragments, which averaged 1-2 centimeters in size, were recovered from the Site between February 3, 2009, and March 4, 2009, with one of these bone fragments found during laboratory work. On March 30, 2009, all human bone fragments were repatriated to KCRC. No other human bone fragments have been found onsite.

23. The human bone fragments were only discovered through meticulous wet-screening of the soil, and examination in the lab.

24. All bones discovered onsite were examined by the Medical Examiner. In addition to 14 human bone fragments, and thousands of small animal bone fragments, there were approximately 200 burned bone fragments found onsite that the Medical Examiner determined to be unidentifiable. Carmen Lucas closely observed and participated in the identification of bone fragments on the site and the determination of whether to send material to the coroner for potential identification. All potential human remains were sent to the coroner's office for identification.

25. All bones were macroscopically examined, but no further testing was conducted. In my experience, Native Americans do not typically allow DNA testing to confirm whether recovered human remains are Native American in origin, because it is considered "destructive" testing.

26. There is no standard criteria used to determine whether a site containing human remains is a "sanctified cemetery" pursuant to Public Resources Code section 5097.9.

27. My opinion is the site is a habitation that was used for daily economic activities such as cooking, food processing, and the production of stone tools. It is also apparent from the small number of human bone fragments that at least two deceased human individuals were cremated and deposited near the core area of the site. It is impossible to determine the location of cremation.

28. It is likely there are more human bone fragments on site because the Site has been extensively disturbed, spreading Native American remains and cultural material across the Site, mixing them with modern materials.

#### KCRC AGREEMENT

29. On March 23, 2009, I prepared my Field Report summarizing ASM's recovery efforts and my consultation with the San Diego County Medical Examiner and KCRC.

30. On August 6, 2009, I informed Bernice Paipa of KCRC that the Project was noticed for public bid, and on August 28, 2009, she inspected the Site.

31. On September 5, 2009, the District met with KCRC at the Viejas Band of Kumeyaay Indians' ("Viejas") reservation to present the Data Recovery process and consider a final mitigation plan for cultural resources. I presented the archeological findings to KCRC, including information regarding the unusually high concentration of artifacts. I also discussed details regarding the human bone fragments, including that the bone fragments were attributed to three to eight individuals.

32. During the presentation, Al Lau, Engineering Manager for the District, also spoke to KCRC regarding the Project, including information regarding the need for the Project, the location of the Project, and the Site being public property. I, and all other speakers presenting, answered all questions put forth by KCRC and all other individuals present. Representatives from Viejas attended our presentation on the Project.

33. On or about October 13, 2009, KCRC provided the District with its requested site mitigation plan that: 1) the grass be cut and a second forensic dog search for human bones be



1 conducted; 2) all artifacts be repatriated to KCRC; 3) a monument be built onsite use the rock  
2 milling feature; and 4) a time be set aside for KCRC to conduct a ceremony honoring Native  
3 American ancestors.

4 34. The District agreed to and complied with all of KCRC's requests.

5 VIEJAS

6 35. In February, 2010, Dave Singleton of the NAHC informed ASM the MLD  
7 designation was changed from KCRC to the Viejas.

8 36. On March 16, 2010, I attended a meeting between the District and Viejas and  
9 answered all questions Viejas had regarding the Data Recovery Program. I also attended the  
10 NAHC's public hearing on April 6, 2010 and addressed all inquiries regarding findings at the  
11 Site.

12 37. I was asked by the District to observe the construction activities on the Project Site  
13 when construction re-commenced on June 3, 2010. On June 4, 2010, a bone fragment was  
14 discovered onsite by the Viejas representative, Carmen Lucas, which was determined by the  
15 Medical Examiner to be unidentifiable. Attached to the District's Notice of Lodgment in support  
16 of opposition to motion for preliminary injunction dated June 11, 2010 as Exhibit J is a true and  
17 correct copy of the Forensic Anthropology Report regarding the bone fragment discovered June  
18 4, 2010, which I received from Madeline Hinkes, San Diego County Medical Examiner's  
19 appointed forensic anthropologist.

20 I declare under penalty of perjury pursuant to the laws of the State of California that  
21 foregoing is true and correct. Executed on 6/11/10, San Diego, California.

22  
23 By: Micah J. Hale  
24 MICAH HALE  
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**KOWALSKI  
DECLARATION**



1 JAMES B. GILPIN, Bar No. 151466  
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6 Attorneys for Defendant  
7 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO  
11

12 VIEJAS BAND OF KUMEYAA  
INDIANS, a federally recognized Native  
13 American Tribe,

14 Plaintiff,

15 v.

16 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation  
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18 Defendant.  
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Case No. 37-2010-000932030-CU-TT-CTL  
Judge: Hon. Judith Hayes

DECLARATION OF FRANK KOWALSKI IN  
SUPPORT OF OPPOSITION TO MOTION  
FOR PRELIMINARY INJUNCTION

DATE: June 25, 2010  
TIME: 1:30 pm  
DEPT: 68

1 I, Frank Kowalski, declare as follows:

2 1. I have personal knowledge of the facts stated below and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am the Director of Operations and Water Quality at Padre Dam Municipal Water  
5 District ("District") and have worked at the District for over 30 years. During this time I have  
6 been extensively involved in the operation of potable, recycled, and wastewater collection  
7 systems. I have earned a D-5 certification as a Water Distribution Operator from the State of  
8 California Department of Public Health and have a B.A. in management from the University of  
9 Phoenix.

10 3. I am responsible for the oversight of the District's entire water distribution system.  
11 My department has 85 employees specializing in all aspects of water supply including  
12 mechanical, electrical, and operational needs. We serve the potable water demands of  
13 approximately 97,000 people in the communities of Santee, El Cajon, Lakeside, Blossom Valley,  
14 Crest Harbison Canyon, Flinn Springs, Dehesa and Alpine. With few exceptions, our system is  
15 intended to operate 24 hours a day/seven days a week with continuance supervision and  
16 maintenance.

17 4. I have been involved with the District's Secondary Connection Project ("Project")  
18 since its inception. The purpose of the Project is to provide a back-up supply of water in the  
19 event that the current two flow control facilities used to import water for the San Diego County  
20 Water Authority ("CWA") aqueduct and the Helix Water District Levy Water Treatment Plant are  
21 insufficient and especially in the event that the El Monte Pump Station fails, as further discussed  
22 below. The problem is that approximately 30,000 customers in the District's Eastern Service  
23 Area rely on a series of pump stations in a single line transmission, including some facilities that  
24 are over 50-years old. Water transmission will come to a halt if a failure takes place on any point  
25 on the transmission line or at the pump station.

26 5. The Project would provide a much-needed back-up water supply to the Eastern  
27 Service Area not only when current infrastructure malfunctions due to daily wear and tear and  
28 aging but also in response to catastrophic events such as wildfires, earthquakes, and drought that

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1 are not uncommon in Southern California. It is unlikely that existing infrastructure could be built  
2 out any further to alleviate the risks the District faces in such events. The Project is the most  
3 viable solution to the water supply needs in this area.

4 6. Interruptions in water service not only deprive residents of their daily water use  
5 but can also result in property damage, or even loss of life, if fire and rescue services do not have  
6 sufficient access to water. In other words, while demands on the District's water supply system  
7 will only further increase due to anticipated future population growth, the Project is also critical  
8 to serving the District's existing customer needs.

9 7. For example, the District's El Monte Pump Station, also known as pump station  
10 number one, is the first in the series of pump stations which serves the Eastern Service Area.  
11 Typically, storage in the system allows for a one to two day continuation of water service,  
12 depending on the time of year, temperature and demand with pumping. The El Monte Pump  
13 Station is approximately 50-years old and is already maxed out at capacity because of the size of  
14 the discharge pipe and pumps. If the discharge pipe from the aging El Monte Pump Station  
15 ruptured, it could take almost a week to repair it given the geographic location of the pipe,  
16 seriously impacting water supply to the District's Eastern Service Area.

17 8. The Project is one of the most important, if not the most important, capital  
18 improvement projects for the District because it would provide an alternative source of water  
19 while the District repairs broken infrastructure. Often times the District must order costly parts  
20 when pumps fail and there is a substantial delay in waiting for them to arrive. Further,  
21 maintenance to facilities should ideally occur during the low demand period in the Winter, which  
22 in Southern California often times occurs only three to four months per year, to increase safety for  
23 District employees.

24 9. And as I personally witnessed during the 2003 Cedar Fires (the Crest community,  
25 for example, lost dozens of homes), a catastrophic event can make it all the more difficult for the  
26 District to access its facilities. Not only are the District's employees put at risk when attempting  
27 to repair such facilities, but fire and emergency service providers often impose access restrictions  
28 to affected areas. The Project would substantially reduce the risk to human life and property in

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1 such circumstances by not only providing an alternative source of water supply but also providing  
2 higher volumes of water in times of need.

3 Executed this 10th day of June, 2010 at San Diego, California.

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6 FRANK KOWALSKI  
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SAN JOSE  
BANK & TRUST  
400 West Broadway, Suite 200  
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**BROWN  
DECLARATION**

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7 PADRE DAM MUNICIPAL WATER  
DISTRICT, a municipal corporation  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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12 VIEJAS BAND OF KUMEYAAY  
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13 American Tribe,

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DISTRICT, a municipal corporation  
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18 Defendant.  
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Case No. 37-2010-000932030-CU-TT-CTL  
Judge: Hon. Judith Hayes

DECLARATION OF NEAL BROWN IN  
SUPPORT OF OPPOSITION TO MOTION  
FOR PRELIMINARY INJUNCTION

DATE: June 25, 2010  
TIME: 1:30 pm  
DEPT: 68

SDJTWBDA000TNR09T1133

DECLARATION OF NEAL BROWN IN SUPPORT OF OPPOSITION TO  
MOTION FOR PRELIMINARY INJUNCTION

1 I, Neal Brown, declare as follows:

2 1. I have personal knowledge of the facts stated below and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am a registered Civil Engineer with a B.S. in Civil Engineering from Cal Poly  
5 Pomona. I have 25 years of engineering experience in both the private and public sectors. I have  
6 worked specifically in the water resources field for 20 years with the last 14 years being at Padre  
7 Dam Municipal Water District ("District"). I served as the Manager of District Projects for the  
8 first eight years at the District and as the Director of Engineering and Planning for the past six  
9 years. Prior to becoming an engineer, I worked several years in the construction industry for both  
10 large and small projects.

11 3. My duties at the District have included performing studies, planning, design,  
12 construction management, administrative duties and management duties. I currently manage the  
13 following groups in the District: Planning and Design, Development Services, Inspection,  
14 Cathodic Protection, Right of Way and Environmental, and GIS.

15 **The Existing Water Supply System**

16 4. The District provides potable water to approximately 97,000 people in the  
17 communities of Santee, El Cajon, Lakeside, Blossom Valley, Crest Harbison Canyon, Flinn  
18 Springs, Dehesa and Alpine. The District's service area encompasses 85 square miles and  
19 supports an average daily water use of 17 million gallons and a peak daily water use of 38 million  
20 gallons. The District's water infrastructure includes approximately 370 miles of pipeline, 16  
21 pump stations, and 27 reservoirs. The District can currently deliver water via two flow control  
22 facilities that import water from the San Diego County Water Authority ("CWA") aqueduct and  
23 the Helix Water District Levy Water Treatment Plant. The current flow, however, is insufficient  
24 for all operational conditions, and specifically fire flow to the District's Eastern Service Area.

25 **The Necessity of the Project**

26 5. Approximately 30,000 customers in the District's Eastern Service Area rely on a  
27 series of pump stations and a single transmission pipeline. Some of these facilities are 50+ years  
28



old and are nearing the end of their design life. Should a failure take place on any point on the transmission line or at the pump station, water to the Eastern Service Area will stop.

6. The District's Secondary Connection Project ("Project") would provide an additional and increased water supply point to the Eastern Service Area to allow the District to perform much needed maintenance on the existing transmission system and would allow the District, in the event of a pipeline failure, to bypass the failure and continue service. The Project would increase system reliability by providing operational flexibility, as well as supplementing the current system during facility maintenance and out-of-service occurrences. During a time of high demand, in a wildfire for example, the Project would also allow the District to pump a higher volume of water to meet the needs of customers and firefighters. This Project is critical to provide higher volumes of water during emergencies, such as wildfires, as well as to address current peak water demands and future population expansion.

7. In the 2003 Cedar fires, the District was one of the hardest hit water districts in San Diego County, including the Eastern Service Area communities of Alpine, Blossom Valley, Harbison Canyon and Crest. After the fires, the District reprioritized its capital improvement projects to expedite projects that would enhance fire safety to our Eastern Service Area. The Project is critical to firefighting efforts because it will increase the water volume pumped by the District and the available storage. Consequently, the District's board voted for a rate increase and debt issuance to finance the construction of this Project. This Project is the most expensive water supply capital improvement ever undertaken by the District.

#### The Project's Long Term Importance

8. The Project is the keystone of the District's capital improvement program that would ultimately provide a secondary transmission system to the Eastern Service Area. A secondary transmission system will provide water supply reliability and increased flows to respond to high volume demand, anticipated population expansion, and emergency efforts.

9. The District's Master Plan is the District's long term plan to meet existing and future customers' water supply demands and reliability needs. The framework of the Project's Master Plan is based on growth projections, and addresses shortcomings of the existing system.

DECLARATION OF NEAL BROWN IN SUPPORT OF OPPOSITION TO  
MOTION FOR PRELIMINARY INJUNCTION



1 The Project is needed for both existing and future uses, and is the District's highest priority  
2 Capital Improvement Project recommended from the Master Plan.

3 10. Another critical District project dependent upon the Project is the retrofitting or  
4 replacement of the District's five reservoirs in the Eastern Service Area. These upgrades are  
5 mandated by the Health Department and will provide long-term water quality protection. Twelve  
6 years ago, the District made a ten-year fix of those facilities; they are currently functioning on  
7 borrowed time. The Project must be online before the District can permanently fix the largest of  
8 the five reservoirs because service to that particular reservoir must be diverted for maintenance,  
9 and without the Project, customers would lose water service.

10 11. The Project is part of a regional program initiated by the CWA in coordination  
11 with individual water districts to improve regional treated water delivery within East San Diego  
12 County, known as the East County Region Treated Water Improvement Program ("ECRTWIP").  
13 The ECRTWIP includes an agreement between the CWA, Helix Water District, Otay Water  
14 District, Lakeside Water District and the District to reallocate demand from existing pipelines and  
15 treatment facilities to better serve the underserved communities in San Diego County.  
16 Specifically, the agreement optimizes local water supply from the Levy Water Treatment Plant.  
17 The Project is expressly required under the ECRTWIP agreement. The Project would allow  
18 CWA to increase the maximum volume delivered to the Eastern Service Area via the Levy Water  
19 Treatment Plant by 50% (from 12 mgd to 18 mgd). The District has already invested in the  
20 ECRTWIP agreement - spending approximately \$3.3 million to CWA as the District's share of  
21 pumping and transmission facilities to be utilized by the Project.

#### 22 Selecting a Site for the Project

23 12. In looking for a property for the Project, the options available were very limited.  
24 In order for the Project's supply line and pump to operate, the Project must be situated at a  
25 particular elevation (due to hydraulic constraints), on at least two acres of land, and in a location  
26 adjacent to the required connection points on each end of the new pipeline. Based on these  
27 criteria, the District identified only 6 potential sites for the Project, all of which were private  
28 property. For each site, the District analyzed the feasibility of locating the Project thereon,

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including required grading, ease of access, hydraulic needs, and aesthetics. The District choose the property that it determined to be the best fit for the Project criteria. In addition, the owner of the property eventually selected for the Project was the only seller of the three potential properties contacted by the District who indicated a willingness to sell. In April 2006, the District purchased the property from its private owner solely for the purpose of the Project.

**Technical Description of the Secondary Connection Project**

13. The Project consists of a large diameter pipeline connected to the Helix Water District's flame line. That transmission line then extends approximately one mile, parallel to and crossing Interstate 8 freeway before reaching the main project site. The transmission main enters the site from the north connecting into the Project's Flow Control Facility ("FCF"), which will be owned and operated by CWA. A separate transmission line leaves the pump station on the site and extends over one-half mile to connect into the existing water infrastructure. A copy of the map which depicts the location of the Core Area and proposed on-site repatriation area is attached to the Notice of Lodgment in Support of Opposition to Motion for Preliminary Injunction as Exhibit K. The PCF will control the flow of the water and meter the amount of water provided by CWA to the District. In order for CWA to control the water supply to each of its member agencies, CWA limits the amount of flow changes that an agency can request to three times a day. The transmission main continues to extend from the FCF south to a 2.5 million gallon concrete water storage tank. The dimension and elevation of the water storage tank is conditioned upon the system hydraulics of the water being received from CWA via the PCF.

14. The Project's proposed reservoir (or tank) would supplement flow during peak periods and improve system reliability by providing temporary storage of water during planned and unplanned outages. The purposes of the water storage tank is to: 1) allow the pump station to act independently of the supply from CWA via the FCF to meet the District customers' water demands (i.e. flow will continue from the PCF even when the flow from the pump station is reduced or stopped and needs to have a location to be stored); 2) provide emergency storage to meet water demands during peak usage and provide a fire supply; and 3) allow water to continue

1 to flow into the storage tanks, to accommodate the SDG&E condition to stop pumping activity  
2 three hours a day.

3 15. There are three separate pipes serving the Project: one is the supply from CWA,  
4 the second is the supply to the District's system (leaving the pump station), and the third is an  
5 overflow/drain from the water storage tank.

6 16. Water flows from the water storage tank into the pump station, which pumps water  
7 to meet current District demand. The pump station consists of a mechanical room, an electrical  
8 room with instrumentation and electronics, and an emergency generator supply room. Outside  
9 the pump station is surge control equipment, used to protect the pumping equipment, as well as an  
10 above-ground fuel storage tank with an emergency generator.

11 17. The site also has areas designated for electrical power, including pads for electrical  
12 transformers, controls and meter.

13 18. The Project site includes an access road and a paved work area to allow District  
14 personnel access to the site. The site also includes other ancillary equipment for the operator to  
15 monitor flow and water pressure to the customers (i.e. pressure relief valves and meters).

#### 16 Cultural Resources

17 19. The District presented the findings of the data recovery program to the Kumeayay  
18 Cultural Repatriation Committee ("KCRC") on September 5, 2009. The presentation contained all  
19 information that the District had regarding cultural resources at the Project site. The  
20 archaeologist, Micah Hale, presented a slide presentation with details regarding the data recovery  
21 findings (including human bones) and the location of the site. The presentation also  
22 communicated that the site was purchased by the District, a public agency, for this particular  
23 Project.

24 20. I attended the Native American ceremony onsite on November 12, 2009. After the  
25 ceremony, Jessie Pinto, one of the Native American participants, told me and Al Lau, the District  
26 Engineering Manager, the participants were appreciative that they were allowed to perform the  
27 ceremony. In addition, Mr. Pinto explained to District staff that, as a result of the ceremony, the  
28

1 site, the Project, and we (the staff) were blessed. He further expressed the opinion that this was  
2 not a burial site but was more along the lines of a kitchen site.

3 21. At the Native American Heritage Commission ("NAHC") public hearing on April  
4 6, 2010, one of the commissioners asked why the Most Likely Descendant ("MLD") designation  
5 was transferred from KCRC to the Viejas Band of Kumeyaay Indians ("Viejas"). Greybuck  
6 Espinoza, a representative from Viejas, stood and told the NAHC that Viejas did not like the  
7 agreement KCRC made with the District, and for that reason, Viejas pursued KCRC to transfer  
8 the MLD designation to Viejas.

9 Damages

10 22. The District has spent approximately \$8 million on the Project already. The  
11 approximate damages if the Project was cancelled would include \$3.1 million in potential  
12 exposure to the District's contractor and subcontractors, and \$3.2 million already paid to CWA  
13 for the District's share of pumping and transmission facilities to be utilized by the Project. It  
14 would cost the District \$7.6 million if the District had to find a new site for the Project. If the  
15 District was forced to walk away from this site and was unable to build on another site, the  
16 District would suffer a total loss of over \$11 million. The District's average Capital Improvement  
17 Budget is \$6M - \$8M per year. External financing was obtained to fund this project.

18 I declare under penalty of perjury pursuant to the laws of the State of California that the  
19 foregoing is true and correct.

20 Executed this 11th day of June, 2010 at San Diego, California.

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22 \_\_\_\_\_  
23 NEAL BROWN  
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**EXHIBIT FF**

MADELEINE J. HINKES, PhD  
Diplomate, American Board of Forensic Anthropology  
2758 Nipoma Street San Diego, CA 92106 619/889-0370

# FORENSIC ANTHROPOLOGY REPORT

Padre Dam Site  
Investigator: Micah Hale, ASM Affiliates  
7 June 2010

On 7 June, I visited the Padre Dam site in the Lake Jennings Park area, at the request of Micah Hale and Carmen Lucas, to examine a bone fragment and determine whether it was human.

The fragment is a 1.5 x 0.9 cm fragment of calcined long bone shaft. Based on this piece, the complete bone would be of small diameter, but the morphology is not indicative of a particular bone. Based on macroscopic analysis alone, including use of a hand magnifier, it is not possible to determine with certainty if this bone is human.

Further analysis would involve destructive methods. DNA analysis is a possibility, but it is often compromised in burned bone.

In histological analysis, the bone fragment would be embedded in a medium and then thin-sectioned. The cortical bone of humans and nonhuman mammals is organized differently, and this can be seen through the microscope. This process takes one to two weeks. Since the Medical Examiner's Office does not have the equipment, I send bone to a colleague in Pomona.

Another possibility is solid-phase double-antibody radioimmunoassay, which uses protein analysis to distinguish species. I do not know of a local lab which performs this test, but I can research this if needed.

Mulhem, CM and DH Ubelaker. 2001. Differences in osteon banding between human and nonhuman bone. *Journal of Forensic Sciences* 46(2):220-222.

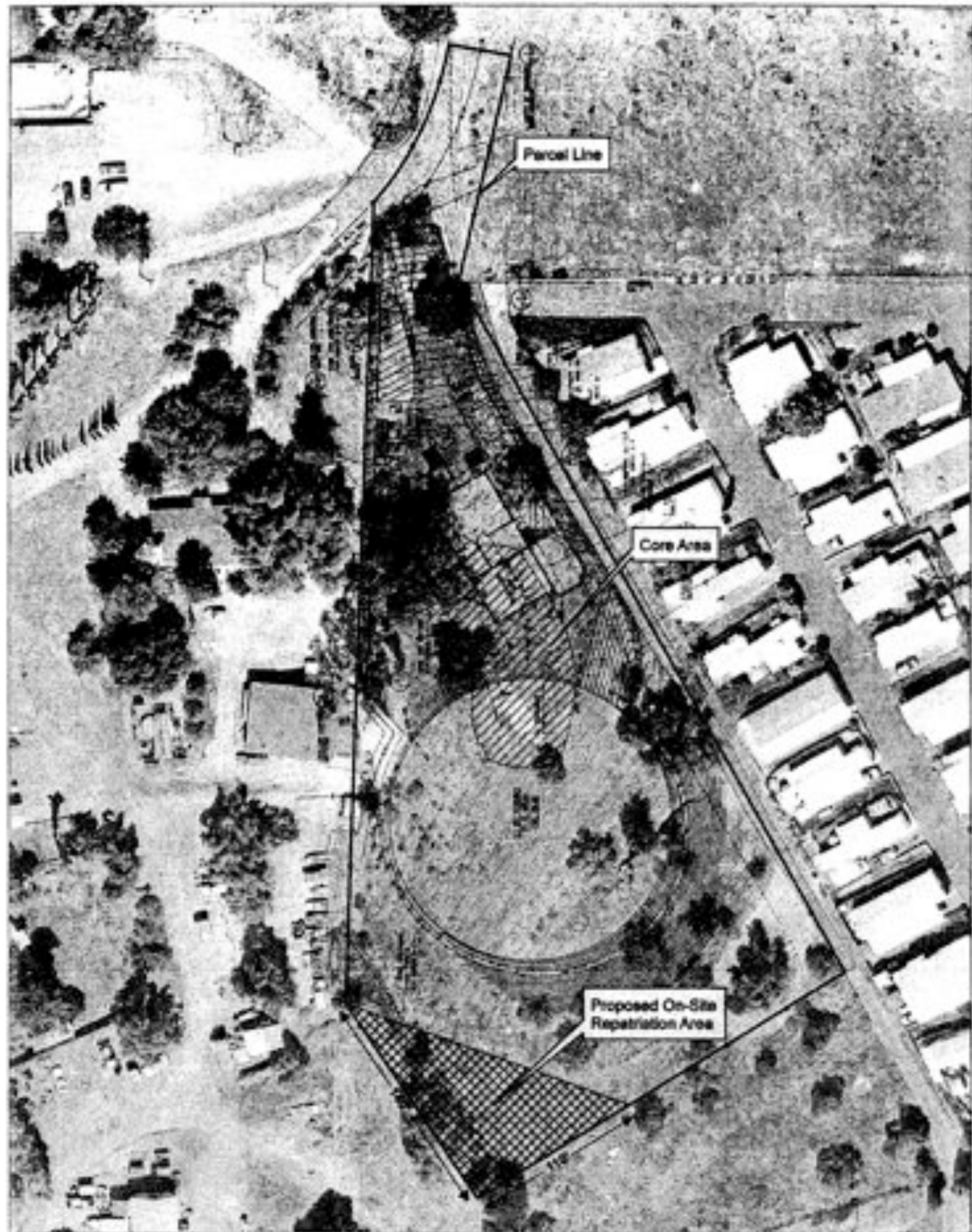
Ubelaker, DH, JM Lowenstein, and DG Hood. 2004. Use of solid-phase double-antibody radioimmunoassay to identify species from small skeletal fragments. *Journal of Forensic Sciences* 49(5):924-929.

Mulhem, CM. 2009. Differentiating Human from Nonhuman Skeletal Remains. in *Handbook of Forensic Anthropology and Archaeology*, S Blau and DH Ubelaker, eds., pp 153-163.

  
Madeleine J Hinkes, PhD

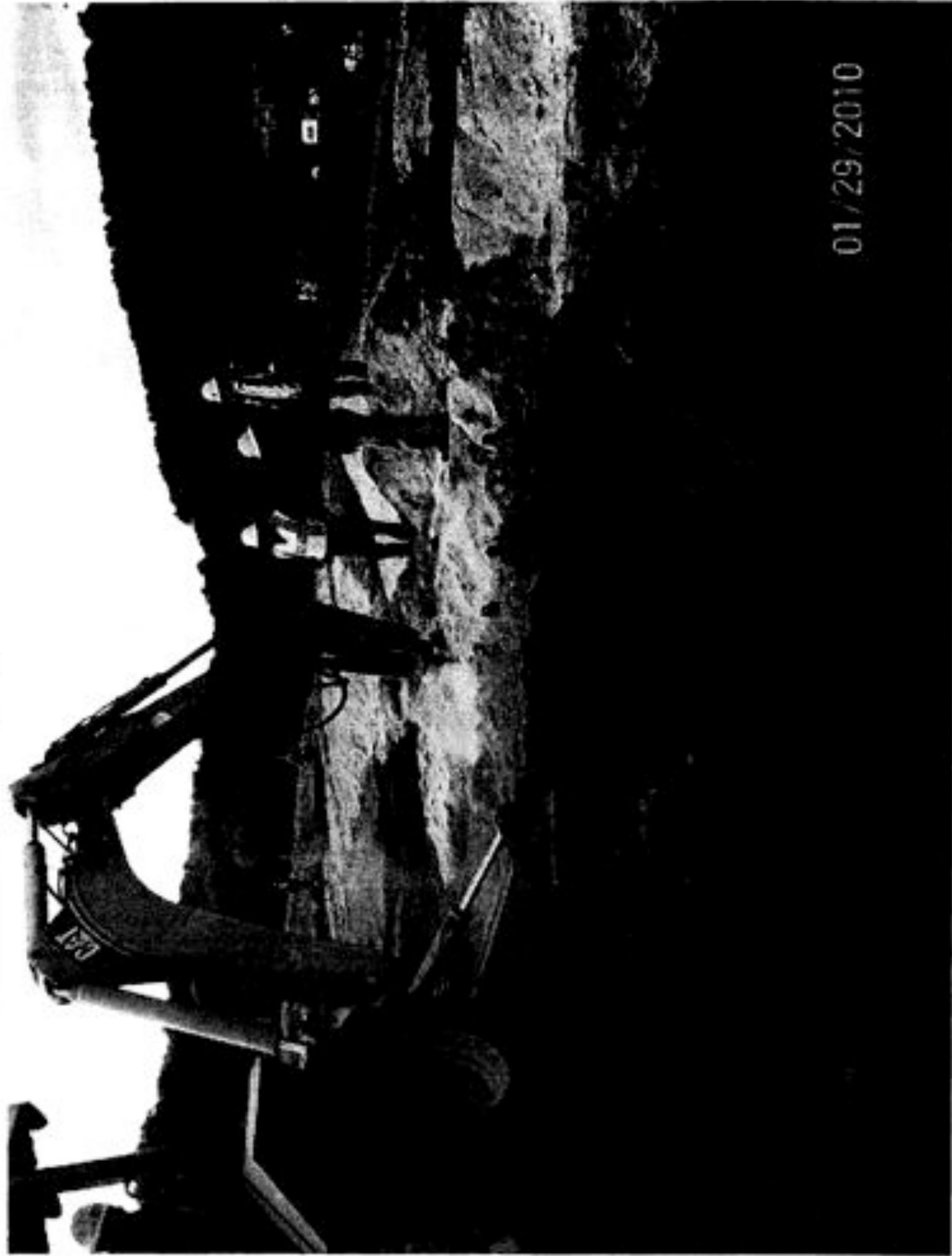
## **EXHIBIT GG**





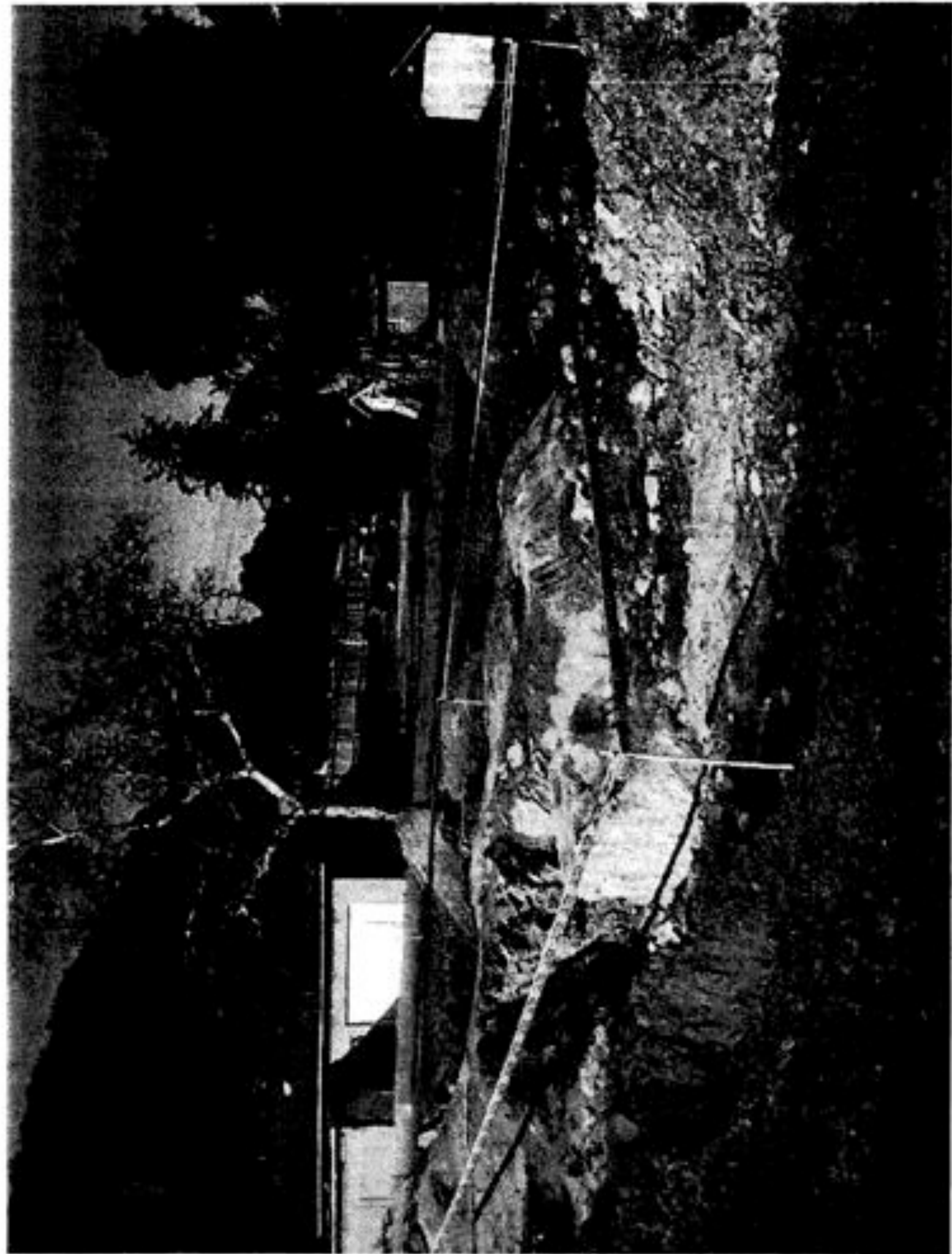


## **EXHIBIT HH**



01/29/2010

## **EXHIBIT II**



**EXHIBIT JJ**



## **EXHIBIT KK**





## **EXHIBIT LL**

